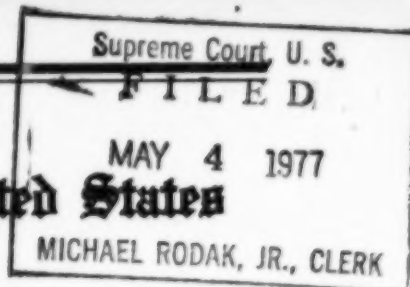


IN THE
Supreme Court of the United States
October Term, 1976



No. 76-1355

PENTHOUSE INTERNATIONAL, LTD., a corporation;
ROBERT GUCCIONE; LOWELL BERGMAN; and JEFF GERTH,
Petitioners,

v.

RANCHO LA COSTA, INC., a Nevada corporation; LA COSTA
LAND COMPANY, an Illinois corporation; LA COSTA MANAGE-
MENT COMPANY, a California corporation; LA COSTA COM-
MUNITY ANTENNA SYSTEM, INC., a California corporation;
PARADISE HOMES, INC., a California corporation; MERV ADEL-
SON and IRWIN MOLASKY,

Respondents.

**RESPONDENTS' BRIEF IN OPPOSITION TO
PETITION FOR A WRIT OF CERTIORARI**

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Questions Presented

This petition for certiorari from a determination of the California courts refusing to summarily dismiss respondents' libel suit presents the following questions:

1. Whether the case is ripe for Supreme Court review, when there has been no final judgment but only

a determination that the affidavits have established triable issues.

2. Whether this Court should entertain this petition when the Court is asked to determine on affidavits—contrary to the unanimous finding of the California courts—both (a) that respondents Irwin Molasky, Merv Adelson and the La Costa corporate entities are so clearly “public figures” that they should be so declared as a matter of law; and also (b) that respondents cannot establish “actual malice” if they are permitted to go to trial.

3. Whether California’s determination that the affidavits present triable issues constituted constitutional error.

Statement of the Case

At issue in this libel action is a grievously defamatory article in *Penthouse* magazine falsely accusing plaintiffs of (among many other things) being members of “organized crime” and the Rancho La Costa resort community in Southern California of being a “syndicate” headquarters where “people could get killed out there and you would never know.” In the two years the case has been pending petitioners have presented no proof of the allegations but, citing hearsay and claiming anonymous “sources,” have sought to block discovery while unsuccessfully urging the summary dismissal of the action under the doctrine of *New York Times v. Sullivan*, 376 U.S. 254 (1964), which requires a “public official” (later extended to “public figure”) to prove “malice”—i.e., knowing or reckless falsehood—in order to recover damages for defamation.

The Superior Court, Los Angeles County, initially ruled that all of the plaintiffs were “public figures” but thereupon modified its ruling. Under the compelling authority of *Time, Inc. v. Firestone*, 424 U.S. 448 (1976), the Court held that plaintiffs Adelson, Molasky and the La Costa corporations (respondents herein), who are not generally known and have not participated in public affairs, could not be held public figures as a matter of law and that there is, at least, a triable issue presented. It also correctly ruled that respondents had raised a triable issue of malice.

Petitioners then applied to the California District Court of Appeal to overturn the Superior Court’s ruling by writ of mandate. The writ was denied. The District Court ruled that the record established “a question of fact so that this Court cannot conclude that the respondent court acted in excess of jurisdiction . . .” Upon further application by petitioners to the California Supreme Court, that Court rejected their petition for a hearing.

The California courts have thus upheld respondents’ right to a trial. Petitioners’ application for certiorari asks this Court to overturn that ruling.

Summary of Argument

1. Since respondents are not well known and have not participated at all in public affairs, they are not “public figures” under *Gertz v. Welch*, 418 U.S. 323 (1974) and *Time, Inc. v. Firestone*, 424 U.S. 448 (1976).

2. Even if the respondents could be deemed public figures, their affidavits have presented striking and detailed

evidence of reckless sensationalism which raises a triable issue of petitioners' "actual malice." *New York Times v. Sullivan*, 376 U.S. 254 (1964); *Curtis Publishing Co. v. Butts*, 388 U.S. 130, rehearing denied, 389 U.S. 889 (1967); *Goldwater v. Ginzburg*, 261 F. Supp. 784 (S.D.N.Y. 1966), *aff'd*, 414 F.2d 324 (2d Cir.), *cert. denied*, 396 U.S. 1049 (1969).

3. The California courts committed no error, therefore, in determining that this case presents triable issues of "public figure" and "malice" which preclude summary dismissal of the complaint.

4. The interlocutory determination is not a final disposition of the issues and does not present a proper case for this Court's intervention by certiorari prior to trial.

Reasons for Denial of the Petition

1. The Case Is Not Ripe for Review.

The order from which this petition is taken denied summary judgment in this case; it was thus not an "effective determination of the litigation" but "an interlocutory or intermediate step" normally not subject to review by this Court. *Gospel Army v. Los Angeles*, 331 U.S. 543, 546-47 (1947); *Richfield Oil Corp. v. State Board of Equalization*, 329 U.S. 69, 72 (1946); *Market St. Ry. v. Railroad Commission of the State of California*, 324 U.S. 548, 551 (1945); *Department of Banking v. Pink*, 317 U.S. 264, 268 (1942); *R. Robertson & F. Kirkham*, Jurisdiction of the Supreme Court of the United States §§26, 28 at 55, 57 (2d ed. R. Wolfson & P. Kurland 1951); *R. Stern & E. Gressman*, Supreme Court Practice §§3.12, 4.19 at 172, 180 (4th ed. 1969).

The order denying summary judgment did not determine any issue. It determined only that the issues should not be disposed of summarily but should be tried in plenary proceedings. The order cannot be said to be complete or to finally dispose of all elements of the controversy so as to merit review by this Court. *Cotton v. Hawaii*, 211 U.S. 162, 170-71 (1908). See also *American Bakeries Co. v. Huntsville*, 299 U.S. 514 (1936) (judgment of highest state court affirming order overruling demurrer held not final).¹

2. Respondents Are Clearly Not Public Figures. At Minimum, the California Courts Committed No Error in Declining to Decide the Issue Prior to Trial.

Respondents Merv Adelson and Irwin Molasky are private real estate developers. They are two of the principals of respondents Rancho La Costa, Inc., La Costa Land Company, La Costa Management Company, La Costa Community Antenna System, Inc. and Paradise Homes, Inc., which participate in the operation of the Rancho La Costa resort in Southern California.

Petitioners' contention that respondents are "public figures" was and is based on an affidavit of counsel which enumerated all of the published references to any of the plaintiffs that have ever appeared in books, magazines and newspapers. The publications covered a period of approximately 25 years (1951-1975). Most of the cited references,

1. It is of course well-settled under California practice that a denial of summary judgment is interlocutory in nature and not appealable. See, e.g., *Wilson v. Wilson*, 54 Cal. 2d 264, 265-66, 5 Cal. Rptr. 317, 352 P.2d 725 (1960) (in bank); *Trani v. R.G. Hohman Enterprises, Inc.*, 52 Cal. App. 3d 314, 315-16, 125 Cal. Rptr. 34 (2d Dist. 1975); *Whitney's At The Beach v. Superior Court*, 3 Cal. App. 3d 258, 261, 83 Cal. Rptr. 237 (1st Dist. 1970).

however, were in fact limited solely to plaintiff Dalitz, who is not involved in this petition.

The published materials submitted to the Superior Court from books, magazines and newspapers showed *no* magazine references to Adelson or Molasky; and only three passing references to Adelson and one to Molasky in books. Adelson received 16 mentions, and Molasky 10, in the New York, Los Angeles and San Francisco press during the entire twenty-five year period. None of the references was prominent. There were a few additional references (mainly social notes and real estate news) in small town newspapers near La Costa and in Daily Variety. References to La Costa were almost entirely limited to travel and sports columns. There was absolutely no proof, nor any offer of proof, that petitioners are in fact generally known to the public or that any of them has ever participated in public affairs.

The proof was thus similar to—and far weaker than—the proof of “public figure” status offered in *Gertz v. Welch*, 418 U.S. 323 (1974), where the plaintiff had expressly admitted *thousands* of writings and public appearances.² This Court held in *Gertz* that such an offer of proof is insufficient as a matter of law stating (*Id.* at 352):

None of the prospective jurors called at the trial had ever heard of [Gertz] prior to this litigation and respondent offered no proof that this response was atypical of the local population.

2. Plaintiffs submitted to the Superior Court certified copies of the *Gertz* record before this Court in which Elmer Gertz expressly admitted literally thousands of writings, appearances, public offices and prominent achievements—all held insufficient to make him a “public figure.”

Similarly, in this case there was a total failure of proof.

This Court, in *Gertz*, formulated two categories of public figures. The first included persons who “occupy positions of such persuasive power and influence that they are deemed public figures for all purposes.” With respect to these, *Gertz* held:

Absent clear evidence of general fame or notoriety in the community, and pervasive involvement in the affairs of society, an individual should not be deemed a public personality for all aspects of his life. (*Id.* at 352)

The instant respondents clearly were not within this category. Prior to the libelous article in suit, they were known, at most, to a small segment of the community, and they certainly were not “pervasive[ly] involve[d] in the affairs of society.” There is no “clear evidence” or any evidence at all to support a public figure finding on this ground.³

The second, alternative, category of public figures defined in *Gertz* consists of persons who “have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved” (*Id.* at 345). It is incontrovertible that the plaintiffs here never thrust themselves to the forefront of any public controversy, either to influence its resolution or for any other purpose.

3. Even the defendants “never heard” of these plaintiffs prior to the *Penthouse* article. At Robert Guccione’s deposition, Guccione testified that he could not recall hearing of Irwin Molasky, had never heard of Allard Roen, and thought he might have heard of Adelson but could not recall what he might have heard. (Guccione deposition, November 1, 1976, pp. 18-23)

For this second criterion, the defendants attempted to substitute one of their own, arguing to the Superior Court (and again here) that the *New York Times* privilege applies as long as the libeled plaintiffs are allegedly involved in a subject of "public interest." That formulation had been enunciated by a divided court in *Rosenbloom v. Metro-media, Inc.*, 403 U.S. 29 (1971), but was squarely overruled in *Gertz*, as this Court made crystal clear in *Time, Inc. v. Firestone*.

In *Time, Inc. v. Firestone*, 424 U.S. 448 (1976), which the Superior Court properly followed, this Court held that a famous socialite, whose divorce proceeding had become a "cause celebre" was not a "public figure" under either of the two standards defined in *Gertz*. This Court reaffirmed its "rejection" of the *Rosenbloom* "subject matter test" as a basis for applying the *New York Times* privilege and ruled that the relevant inquiry should be "confined" . . . to whether a plaintiff is a public officer or a public figure who might be assumed to have voluntarily exposed themselves to increased risk of injury from defamatory falsehood . . ." (*Id.* at 966). The Court said:

Respondent did not assume any role of especial prominence in the affairs of society, other than perhaps Palm Beach society, and she did not thrust herself to the forefront of any particular public controversy in order to influence the resolution of the issues involved in it. (*Id.*)

Precisely the same is true of the present respondents. They have not assumed special prominence in the affairs of society other than their private resort in Southern California. Even more clearly, they have not thrust themselves to

the forefront of *any* public controversy in order to influence the resolution of the issues involved in it. They have simply been the involuntary victims of a defamatory attack.

The same is true of the corporate respondents. They clearly do not have "general fame or notoriety in the community and pervasive involvement in the affairs of society" (*Gertz, supra*); nor have they thrust themselves into any public issue. Operation of a successful resort hotel—one of a great many in this country alone—does not render privileged an abusive attack against that hotel as being "established and . . . frequented by mobsters." The cases so hold. *Mashburn v. Collin*, 2 Med. L. Rep. 1555 (La. Ct. of App., 1st Cir. Dec. 20, 1976); *Drotzman's, Inc. v. McGraw-Hill*, 500 F.2d 833 (3d Cir. 1975); *El Meson Espanol v. NYM Corporation*, 389 F. Supp. 357 (S.D.N.Y.), *aff'd*, 521 F.2d 737 (2d Cir. 1975); *Bavarian Motor Works (B.M.W.) v. Manchester*, 61 Misc. 2d 309, 305 N.Y.S.2d 593 (Sup. Ct. 1969); *Grove v. Dun & Bradstreet*, 483 F.2d 433, 436 (3d Cir. 1971). As was stated in *El Meson Espanol v. NYM Corporation, supra*, referring to *Gertz v. Welch*:

If he [*Gertz*] is not [a public figure] *a fortiori*, a corporation operating a place of public accommodation (a bar and grill) and holding itself out to the public as operating a safe and proper place to go is not a public figure. (389 F. Supp. at 359) (emphasis added)

In the recent case of *Mashburn v. Collin, supra*, the Court similarly held:

A reading of the recent case of *Time, Inc. v. Firestone*, 424 U.S. 448, 96 S.Ct. 958, 47 L.Ed. 2d 154 (1976) and the case of *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 94 S.Ct. 2997, 41 L.Ed. 2d 789 (1974) brings us to the conclusion that the Supreme Court has held that

unless a person thrusts himself to the forefront of a particular public controversy in an effort to influence the resolution of the issues involved in the controversy or assumes a role of especial prominence in the affairs of society, he is not considered a *public figure*. The fact that Mr. Mashburn ran a restaurant open to the public and advertised his restaurant publicly does not make him a *public figure* within our appreciation of the United States Supreme Court definition thereof. Mr. Mashburn has in no way attempted to influence society by the act of operating a restaurant business. (2 Med. L. Rep. at 1556) (emphasis in original)

Quite obviously if Mrs. Firestone was, as a matter of law, *not* a public figure, it would be anomalous to hold as a matter of law that Irwin Molasky, Merv Adelson and the La Costa corporations *are* public figures. It is irrelevant to argue (as do the petitioners) that respondents have met and associated with famous people—as Mrs. Firestone certainly did; or that they called a news conference to announce this suit—Mrs. Firestone called a *series* of such highly publicized news conferences. The present record clearly will not support a “public figure” determination under the clear rulings of this Court. At minimum, there was no error by the California courts in reserving the “public figure” issue for trial.

3. Even if the Respondents Could Be Considered “Public Figures,” the Abundant and Striking Evidence of Reckless Sensationalism in the Publication of the La Costa Article Would in Any Event Require a Trial.

Even if there were any basis for holding respondents to be “public figures”—and hence subject to the burden of proving “malice” in the constitutional sense—there is

ample evidence in the present record that the La Costa article was published with reckless disregard for the truth, so as to satisfy the *New York Times v. Sullivan* standard. The California courts committed no error in determining that a genuine issue of “malice” was presented.

New York Times Co. v. Sullivan, 376 U.S. 254 (1964), defined the “malice” required to rebut the *Times* privilege as publication “with knowledge that [the libel] was false or with reckless disregard of whether it was false or not” (*Id.*, at 279-80). The present case is a classic instance of recklessness in the sense intended by *New York Times* and as defined in the cases that have followed it.

In *Curtis Publishing Company v. Butts*, 388 U.S. 130, rehearing denied, 389 U.S. 889 (1967), the first Supreme Court decision to extend the public official privilege to “public figures,” the Court had occasion to define more fully the standard of “reckless disregard” of the truth. The case involved an article in the *Saturday Evening Post* falsely accusing plaintiff of having conspired to “fix” a football game. The *Saturday Evening Post* had accepted the author’s conclusions without examining his informant’s notes and without submitting the article for review by anyone expert in the subject matter (professional football). The Supreme Court found this conduct “reckless” in the constitutional sense and rendered judgment for the plaintiff. It based this decision in part on the fact that the *Post* had introduced a policy of “sophisticated muckraking” which had induced a relaxation of its previously high publishing standards. The Court said:

The evidence showed that the Butts story was in no sense “hot news” and the editors of the magazine

recognized the need for a thorough investigation of the serious charges. Elementary precautions were, nevertheless, ignored . . .

Burnett's notes were not even viewed by any of the magazine's personnel prior to publication . . . No attempt was made to screen the films of the game to see if Burnett's information was accurate, and no attempt was made to find out whether Alabama had adjusted its plans after the alleged divulgence of information.

The Post writer assigned to the story was not a football expert and no attempt was made to check the story with someone knowledgeable in the sport . . . The Saturday Evening Post was anxious to change its image by instituting a policy of "sophisticated muckraking," and the pressure to produce a successful expose might have induced a stretching of standards. In short, the evidence is ample to support a finding of highly unreasonable conduct constituting an extreme departure from the standards of investigation and reporting ordinarily adhered to by responsible publishers. (*Id.* at 157-58)

Chief Justice Warren, concurring, agreed that the evidence supported a finding of "malice" under the most rigid statement of the *Times* standard. He wrote:

The petitioner in this case is a major factor in the publishing business . . . an editorial decision was made to "change the image" of the Saturday Evening Post with the hope that circulation and advertising revenues would thereby be increased. The starting point for this change of image was an announcement that the magazine would embark upon a program of "sophisticated muckraking," designed to "provoke people, make them mad." . . . The slipshod and sketchy investigatory techniques employed to check the veracity of the source and the inferences to be drawn from the

few facts believed to be true are detailed at length in the opinion of Mr. Justice Harlan . . . I am satisfied that the evidence here discloses that degree of reckless disregard for the truth of which we spoke in New York Times and Garrison. Freedom of the press under the First Amendment does not include absolute license to destroy lives or careers. (*Id.* at 169-70)

The present facts demonstrate far greater recklessness on the part of *Penthouse* than was proven against the *Saturday Evening Post* in *Butts*.

The affidavits, depositions and documents in this case have established *inter alia*, the following facts:

1. Defendant *Penthouse* is a notoriously and deliberately sensationalist publication which, since its introduction in the United States in 1969, has been engaged in a highly publicized head-to-head circulation war with its archrival, *Playboy*. Its editorial policies are aptly symbolized by a placard on its executive editor's wall reading, "DAMN LE MOT JUSTE—FULL SPEED AHEAD." Its publisher, Robert Guccione, is known as the man who first "went pubic," based on his introduction in *Penthouse* of full frontal nudes—and who then "went pink" by displaying *Penthouse*'s nudes with legs spread wide. He has admitted in published interviews that he has had to pay numerous libel judgments for false and defamatory publications, which seem, indeed, a permanent fixture of his magazine. The very inception of *Penthouse* was marked by an immediate libel suit by Lord Bertrand Russell for a false advertisement that Lord Russell had purportedly agreed to write for the magazine. Guccione paid substantial damages and admitted the falsity of the advertisement in Court.

2. Immediately prior to the La Costa article *Penthouse* published an "organized crime" series entitled "The Last Testament of Lucky Luciano," which was exposed as a hoax. The "Luciano" series was publicized by *Penthouse* as Luciano's own story, purportedly derived from tape recorded interviews. The *New York Times* revealed, however, in January 1975 (two months before the La Costa article) that the "Luciano" series was largely a re-hash of previously published materials, that no tape recordings of Luciano interviews existed, that Little Brown & Co. had blamed *Penthouse* for inventing the reference to alleged tape recordings, and that many of the "facts" published in *Penthouse* were impossible because Luciano was dead or in prison at the time. A crime expert commenting further in the *New York Times* criticized the failure to submit the manuscript to specialists in view of the "serious charges" it contained; pointed out that the vast flood of "organized crime" literature (so-called "Godfather literature") from which the "Luciano" series was derived, was notoriously unreliable; called "Luciano" the "rough equivalent in the Wall Street world of watered stock"; and termed the whole affair a "literary Watergate."

3. Immediately after publication of the La Costa article, *Penthouse* published a series on the Kennedy assassination. Guccione sent an advance copy of the series to President Ford. He received a reply from counsel to the President, enclosing an analysis concluding that the *Penthouse* study involved "deliberate misrepresentation of the truth," including "misrepresentation by omission of key portions of the record and misrepresentation by misstating key portions of the record" (emphasis added).

4. The La Costa article was thus sandwiched between the "Luciano" series (a "literary Watergate") and the Kennedy assassination series (a "deliberate misrepresentation of the truth"). In the meantime, a draft of the La Costa article had languished in the *Penthouse* editorial offices for months. In October 1974 (four months after submission), an editor described its editorial condition as "poor," and concluded, "I still think this doesn't work. It's too choppy, too full of names, the writing is primitive, and after all, it's still about a hotel." He called it "an albatross." It nevertheless was published. It has provoked three separate libel suits, including this one.

5. Contrary to petitioners' assertions, *Penthouse's* editorial staff did nothing to verify the accuracy of the article. *Penthouse* Articles Editor, Peter Bloch, stated explicitly in his affidavit herein that the contribution of *Penthouse* to the article "was purely editorial, condensing, organizing and rewriting it in light of traditional considerations of style, grammar and concise presentation" (emphasis added).

6. The authors of the La Costa article, Jeff Gerth and Lowell Bergman, were novices. They were first hired by *Penthouse* to do an article accusing President Nixon of ties to organized crime ("Richard M. Nixon and Organized Crime," *Penthouse* July 1975). Each of them had written only one prior article apiece—one in *Ramparts* and one in *Sundance* magazine (a counter-culture bi-monthly, now defunct). Guccione, however, falsely represented to *Newsweek* that he had "put together a special investigative

reporting team comprised of former members of the CIA and FBI.”

7. Contrary to respondents' allegation that the reporters engaged in "eighteen months" of careful investigation of the La Costa article, their pretrial testimony showed that they in fact completed the article within eight or nine weeks. The La Costa article was commissioned on May 1, 1974 and was submitted by "late June" or "early July" of 1974 according to their own testimony. It then languished for months, described by an editor as "poor," "primitive" and "an albatross," before it was finally published.

8. The authors' thesis (dramatically demonstrated by the title of the La Costa article emblazoned on the front cover of *Penthouse*—"La Costa: Syndicate in the Sun")—was that La Costa was a "syndicate" venture, founded and run by organized crime with illicit "laundered" funds. Their own drafts and research notes showed that they had uncovered no evidence to support such a thesis and much evidence to the contrary:

(a) Their notes showed that according to the Sheriff of San Diego County, La Costa had been subjected to "continuous intelligence . . . always giving the place a clean bill" and that when asked if criminal activity had been detected at La Costa he replied, "No. Not a thing." They neither heeded this comment nor reported it in the article.

4. Gerth and Bergman had no FBI or CIA experience. Their depositions established that they had each previously held a succession of jobs for a few months at a time (camera store clerk, census taker, market researcher, etc.) having nothing to do with law enforcement.

(b) A supervisor of San Diego County familiar with La Costa also rejected such allegations when similarly queried, and called the accusations the product of "insane jealousy among some people with sick minds." The reporters disregarded this, too.

(c) The Attorney General of California was asked by the authors about purported state investigations of La Costa and the "Baptist Foundation Swindle." The Attorney General replied that he knew of no such investigations. He also stated that there was no significant "syndicate" influence in California. The first draft of the La Costa article quoted him to that effect, saying "the so-called Mafioso, Cosa Nostra types, the Godfather sort of thing exists to a very minimum degree here." However, the quotation was *deleted* from the article prior to publication.

(d) The authors' first draft also stated that the La Costa management actively "discouraged a variety of gamblers and swindlers from hanging around." This, too, was *deleted* from the article, which alleged instead, as a central part of its attack, that La Costa was a gathering place for such characters.

(e) One of the authors wrote in his own notes that, "There are numerous reports of big gambling at La Costa" but that his own visits gave him the contrary impression. He concluded: "If we are to write up illegal activities at La Costa, this seems petty and weak." The La Costa article nevertheless contained gambling allegations, contrary to the fact.

(f) The article implied a connection between La Costa's owners and the planning of the Watergate

"cover-up," whereas the authors acknowledged that the only basis for such an allegation was that John Dean and other members of the White House staff stayed at La Costa (a few miles from the Nixon home at San Clemente). Gerth testified, in fact, that he had no information that even suggested "that the management or people at La Costa knew, *per se*, that meetings were taking place between Mr. Dean, Haldeman and Ehrlichman"—much less that they were privy to or in any way implicated in the plottings.

(g) The authors also acknowledged that their investigations showed nothing to support charges in the article that La Costa was built with "mob" funds. Co-author Jeff Gerth claimed he had thoroughly investigated allegations charging the investment of "laundered" funds in La Costa. The only source of information on "laundered money" that he was willing to name was Robert Morgenthau, then U.S. Attorney in New York. Gerth claimed to have talked to Morgenthau at length. He was then asked "Did he [Morgenthau] say anything about La Costa or the plaintiffs in this case?" He replied, "I don't think so." He then admitted that in fact his investigations had produced no evidence whatever to support such a charge. Nevertheless, the article claimed that La Costa was built because "the legal and illegal profits of the mob's worldwide operations needed more outlets."

(h) The article asserted that "the greedy manipulations of the men who hold their meetings at La Costa have contributed to a massive bank failure." Petitioners' only support for this statement was that La

Costa had received mortgage loans from C. Arnholt Smith's U.S. National Bank. The mortgages were routine, were not in default, and petitioners showed no basis for blaming La Costa for "contributing" to the failure of the bank.

(i) The article similarly attributed "a plague of security frauds that have been estimated to cost Americans *fifty billion* dollars" to "greedy manipulations" planned at La Costa (emphasis supplied). When challenged, petitioners could not even define what the article was referring to when it claimed a "fifty billion dollar" fraud. The purported link to La Costa of such a vast swindle has remained a complete mystery. The petitioners cannot even explain the charge, let alone support it.

(j) The article similarly charged that "greedy manipulations" and "illicit financial operations" at La Costa have "helped tighten the market for the average citizen trying to borrow money as well as encouraging the inflationary spiral" and have "cost taxpayers uncounted millions of dollars." These charges have also remained unsupported and unexplained—pure sensationalism in the "big lie" tradition.

(k) The La Costa article also referred to a "\$26 million stock fraud" perpetrated by the "Baptist Foundation of America," which it asserted had close ties to the "La Costa-Teamsters clique." When respondents stated they had never even heard of such an organization and certainly had no "close ties" to it, the reporters contended that some of the individuals

involved in the alleged "Baptist Foundation Swindle" had borrowed money from the Teamsters—thereby allegedly establishing "close ties" to the "La Costa-Teamster clique" because La Costa is also a Teamster borrower. The allegation was thus still another (and typically remote) exercise in guilt-by-association in which the article repeatedly indulged.⁵

(1) The authors claimed they relied on three "official reports." The documents, when produced, bore no mark of identification establishing that they were official. They admittedly had not been authenticated. Furthermore, they did not support the authors' charges. One of them, a document the authors claim to have emanated from the FBI, speculates about crime influence in La Costa and concludes that, "*It is possible that a top LCN [La Cosa Nostra] member may be observed in the Rancho La Costa area, possibly as a guest or visitor, but there is no indication such person will move in as a part of the management or policy making group at Rancho La Costa*" (emphasis added). This statement in a document the petitioners claim to have relied upon as an official FBI pronouncement is the exact opposite of the position they took in their La Costa article.

5. Again, petitioners have not even set forth the facts of the alleged Baptist Foundation swindle (such as where and when it took place, what the swindle consisted of, what enforcement agencies were involved, what individuals were convicted) and still less, any connection between it and the plaintiffs.

Declaration of Sheriff John Duffy

In opposition to defendants' motion for summary judgment, plaintiffs submitted the Declaration of Sheriff Duffy of San Diego County, in which he said, "I have stated publicly in the past, and I state again for the use of this court that La Costa and the La Costa development has been routinely scrutinized by the San Diego County Sheriff's office for many years. No evidence of criminal activity by La Costa or the management of La Costa of any kind has ever been detected at the resort." In view of Sheriff Duffy's known position (which the authors had recorded in their own notes) it is particularly reprehensible that the authors not only ignored the Sheriff's opinion—which directly refuted their accusations—but charged in the article that La Costa had engineered its annexation to the town of Carlsbad so that "surveillance by the San Diego Sheriff's office will [now] be restricted!"

Report of the San Diego County Grand Jury

In 1976 a San Diego County Grand Jury investigated allegations of organized crime involvements in San Diego County. The Grand Jury's final report noted that it had received a number of allegations of organized crime activity in San Diego County, had investigated them all and that, "all this effort did not develop one provable, or prosecutable case". The Grand Jury added:

In many of them there was a fragment of truth, but in the telling and retelling (perhaps in some cases due to malice), the facts became distorted. Once again, ill-considered statements by police officials, associations with known organized crime figures, stupid jokes,

or *unfounded suspicions* were the root of these allegations (Report entitled "Organized Crime in San Diego County" submitted on July 7, 1976 by the 1975-76 San Diego County Grand Jury) (emphasis added).

Affidavit of Professor G. Robert Blakey

Respondents also submitted a detailed affidavit by Professor G. Robert Blakey, Professor of Law at Cornell University, in opposition to petitioner's motion for summary judgment.

Professor Blakey, who is the Director of the Cornell Institute on Organized Crime, has acted as an expert consultant to government and to publishers (including *Time*, *Life* and *Look* magazines), in connection with investigative work addressed to the issue of organized crime. He was one of four principal consultants to the President's (President Johnson) Commission on Law Enforcement and the Administration of Justice, assisted in the preparation of the landmark 1967 Task Force Report of the Commission entitled *Organized Crime* and was the author of one of the four basic studies on which it was based. He previously served in the Department of Justice under Robert Kennedy as a Special Attorney in the Organized Crime and Racketeering Section, and for four years was Chief Counsel of the Senate Subcommittee on Criminal Law and Procedures (the McClellan Committee). He has been a consultant on organized crime to the National Commission on the Reform of Federal Criminal Laws and the Commission to Review National Policy Toward Gambling. He is a member of the Organized Crime Task Force of the National Advisory Committee on Standards and Goals sponsored by the Law Enforcement Assistance Administration of the U.S. De-

partment of Justice. He is unquestionably one of the country's preeminent experts in the field of organized crime. In Professor Blakey's affidavit he stated that he had fully reviewed the motion papers submitted on both sides and was of the view that the defendants' motion "does not deserve to be granted."

Professor Blakey first set forth the reasons for his concern in this matter, stating:

I have been a participant in much of the serious investigative and enforcement effort devoted to the control of organized crime over the past sixteen years. At the same time, I have been a fascinated observer of the growth of the unfortunate mythology that has developed around the subject. I view this present libel suit, therefore, as presenting a unique opportunity for judicial analysis and public instruction in the distinction between myth and fact.

Over the past twenty years, literally hundreds of books and countless articles have been written on the subject of the "mob," the "Mafia" and "organized crime." Many of them have been enlightening and valuable. Nevertheless, the public has remained singularly unenlightened by the literature and has never been aroused by it to serious and sustained action. Part of the reason has been the very glut of popular literature and the fictional quality of so much of it. Literary exploitation of a "blood-and-guts" subject is obviously inevitable, but it often serves as an obstruction to serious social analysis and law enforcement efforts.

. . .

Responsible, hard-fighting journalism can be highly supportive of law enforcement efforts; it is frequently deserving of our gratitude. Irresponsible, unprofessional sensationalism is not responsible journalism;

it serves no significant public purpose; and it is many times actually counter-productive. Such careless sensationalism deserves no one's thanks, and it is not usually entitled to the Constitutional protection the Supreme Court has extended to the press, since it is usually not published in good faith, and it is usually published with a "reckless disregard" for truth.

Professor Blakey stated that his review of the La Costa article, the motion papers and his own knowledge of the vast popular and serious literature of organized crime had convinced him that the La Costa article was "a prime example of the counterproductive sensationalism serious specialists abhor" and that petitioners' conduct "appears reckless in the extreme." He stated a number of reasons.

Professor Blakey first pointed out that "*Penthouse* is not known or recognized for its investigative reporting but for its sensationalist and rather salacious attention to sex." He acknowledged that "this does not necessarily disqualify the magazine from doing serious work but the fact is that its prior ventures into the field of organized crime have tended to establish its unreliability and to raise serious doubt of its good faith generally, but particularly in this area."

Professor Blakey then reviewed the history of *Penthouse's* involvement in the publication of the "Luciano" series, pointing out that the series was recognized by experts as a hoax. He was also familiar with *Penthouse's* other article by Bergman and Gerth, "Richard M. Nixon and Organized Crime," which he knew to contain inaccuracies. He added that Gerth and Bergman had no personal reputations in the field of organized crime reporting and

that their three published articles on the single theme of an alleged connection between former President Nixon and organized crime (one in *Ramparts*, one in *Sundance* and one in *Penthouse*)

appear to be substantially the same article, rewritten and republished three separate times. They do not appear to be investigative pieces, but a rewrite of previously published material. They do not establish Gerth and Bergman as serious investigative reporters, but as individuals who are exploiting a currently popular theme without original research or indeed serious thought.

Turning to the La Costa article itself, Professor Blakey showed there was absolutely no evidence to support the "Watergate" charge, the "Baptist Foundation" accusation, the "fifty billion dollar swindle" allegation, or the bank failure charge. He analyzed in detail the "evidence" cited to support the "syndicate" charges, showed that it narrowed down to seven specific documents—four news articles and three purportedly "official" documents, demonstrated that the "official" documents had not been authenticated, and showed that neither they nor the news articles supported *Penthouse*. He concluded, "It is clear that the *Penthouse* allegations went far beyond the material that is now cited to support them. No factual basis appears for the [*Penthouse*] assertions . . ."

Professor Blakey pointed out, finally, that even rumor and speculation have centered primarily on plaintiff Dalitz, not the other plaintiffs; that Dalitz was entitled to a fair trial and that the other plaintiffs "are even more so entitled" (emphasis in original).

The Superior Court determined that at least respondents Adelson, Molasky, and the La Costa corporations were indeed entitled to a trial. The California District Court of Appeal and the Supreme Court of California agreed.

The lower courts' refusal to dismiss this action as to Merv Adelson, Irwin Molasky and the La Costa corporate entities was clearly correct. The record in no way justifies the defendants' application for Supreme Court intervention by writ of certiorari. Factual issues are plainly presented in this case which in justice should be tried. *See, e.g., Goldwater v. Ginzburg*, 261 F. Supp. 784 (S.D.N.Y. 1966), *aff'd*, 414 F.2d 324 (2d Cir.), *cert. denied*, 396 U.S. 1049 (1969).

Conclusion

This Petition Should Be Denied.

Respectfully submitted,

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APPENDIX

PENTHOUSE

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THE INTERNATIONAL MAGAZINE FOR MEN

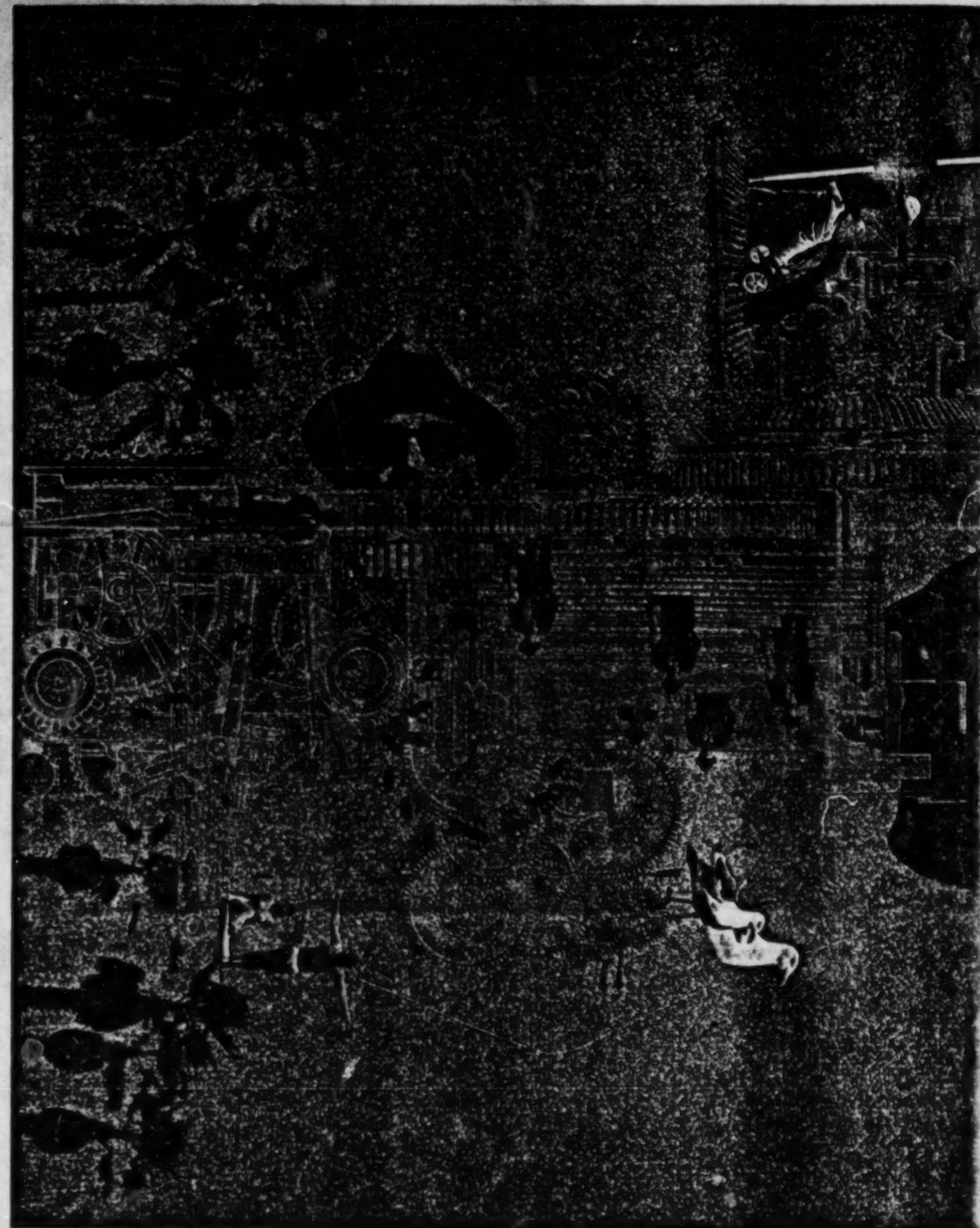
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VIETNAM
VETERANS
EXCLUSIVE
PENTHOUSE
POLL ON
AMNESTY



The Hundred-Million-Dollar
Resort with Criminal Clientele

LA COSTA

By Lowell Bergman and Jeff Gerth

"I received a call from Ehrlichman in San Clemente telling me . . . to come to California that night so that he could discuss in full detail the problems of how to deal with the forthcoming Senate hearings. Everyone was staying at the La Costa Resort Hotel."—Testimony of John W. Dean III before the Senate Select Committee on Presidential Campaign Activities, June 25, 1973.

"Hell, what's to keep La Costa from becoming the site of [another] Apalachin convention? . . . They could hold a two- or three-day meeting, and we'd never even know the damned thing was going on."—A San Diego law-enforcement officer, quoted in the Los Angeles Times.

Rancho La Costa is a 5,600-acre California coastal complex located thirty miles south of Nixon's San Clemente estate. It is a luxurious arrangement of residential units, a resort hotel, a theater, a golf course, the only AMA-approved health spa in the country, various convention facilities, and a country club. It cost close to \$100 million to build, and more than a thousand employees look after its maintenance.

It looks very innocent. But in reality this rich man's playground, patronized by powerful figures from business, labor, and government, was established and is frequented by mobsters.

The greedy manipulations of the men who hold their meetings at La Costa have contributed to a massive bank failure and to a plague of security frauds that have been estimated to cost Americans fifty billion dollars. These manipulations have helped tighten the market for the average citizen trying to borrow money as well as encouraging the inflationary spiral. In addition, the illicit financial operations planned at La Costa have cost taxpayers uncounted millions of dollars, not only in uncollected income taxes but also in other, more complicated ways.

The interwoven jungle of deals, arrangements, and associations—directed by keen legal and financial architects operating with a seemingly unlimited re-

serve of cash—has resisted the probings of most investigative reporters and has blunted, or corrupted, most of the official investigations.

The primary founders of La Costa were syndicate "bluebloods." Their roots were in Prohibition rum-running and bust-out gambling. The bulk of the financing for La Costa since its inception ten years ago has come from friends in the scandal-ridden Teamsters Central States Pension Fund. Additional funds were made available by C. Arnholt Smith's United States National Bank of San Diego. A member of Nixon's inner circle along with Bebe Rebozo and Robert Abplanalp, Smith ran into trouble early in the Watergate struggle. In October 1973, the Federal Deposit Insurance Corporation declared his billion-dollar bank insolvent, ending one of the largest financial frauds in history.

Rancho La Costa has been controlled by the Moe Dalitz mob—which includes Dalitz, Allard Roen, Merv Adelson, and Irwin Molasky. (They use the acronym DRAM, made up from the first letters of their last names, as a kind of corporate shorthand.) Dalitz has been a prime mover in transforming organized crime into a financial powerhouse. At seventy-five, he is a senior mentor among the criminal aristocracy. A close friend commented, "You'd never guess who he is if you saw him. He's a little man with a round head who walks around with his arms wrapped behind his back like Groucho Marx."

He and his partners at La Costa represent a major force in entertainment, television (Lorimar Productions, founded by Adelson and Molasky, among others, produces such shows as "The Blue Knight," "The Waltons," etc.), construction, laundries, and, of course, gambling. It was Dalitz who persuaded the then-president of the Teamsters Union, James Riddle Hoffa, to finance Las Vegas casinos, starting with Moe's Desert Inn and related properties, with Teamsters retirement cash.

The La Costa operation is an extension of services the crime syndicate people provide in their Las Vegas casinos. Events at La Costa are regularly featured in society columns and travel sections. This adult playground has attracted glamorous jet-setters as well as a horde of underworld heavyweights. La Costa regulars include John "Jake the Barber" Factor, who has been identified in news reports as a notorious international confidence man and stock swindler; Allen Dorfman, a special consultant to the Teamsters Pension Fund who was convicted of kickbacks and is currently under indictment; Jim Braden (Eugene Hale Braden), mob courier and "lovebird swindler," as he was known in Dallas; Arnold Kimmes, a San Diego "developer" who has served time for fraud; Anthony Giacalone, a mob boss in Detroit; Louis "the Tailor" Rosanova, a Chicago mobster now headquartered in Georgia; and Anthony Spilotro, a notorious thug from Las Vegas.

A veneer of respectability is maintained by a host of resident celebrities, including

Sandy Koufax, Hoagy Carmichael, and Desi Arnaz. Country-club members and regular guests such as Frank Sinatra, Bing Crosby, and Dean Martin rub elbows with Henry Ford and others of the established rich.

Moe Dalitz likes gold and tennis—tastes acquired since the old days. Accordingly, La Costa is studded with more than twenty tennis courts. When Dalitz left his Las Vegas home adjoining the Desert Inn course, it was to relocate in an almost identical house next to the La Costa course—the world's largest and costliest (\$2.4 million to date).

The PGA Tournament of Champions, formerly a Desert Inn feature, was moved to California by Dalitz. It typifies the La Costa style. Each player gets \$2,000 plus expenses just for showing up. Until 1971, the 170 crowd-control marshals were active-duty U.S. Marines bussed in daily from Pendleton. They were fed all week and given golf hats and windbreakers for their troubles.

The nerve center of La Costa is the country club, which houses the land-sale office, golf shop, restaurants, swimming pool, and meeting rooms. The latter have been the site of numerous executive-board Teamsters meetings. When business and security are primary, the management makes use of six "executive houses" nearby. Here the most important VIP's can relax, safe from the curious as well as from the surveillance of law-enforcement agencies.

The nature of the clientele makes understandable La Costa's preoccupation with security. A great many important politicians have stayed there. High-ranking White House staff members used La Costa's secure grounds for planning parts of the infamous Watergate coverup. Up until the time this was revealed by John Dean, public figures of both parties could be found taking the waters there. They included Cook County judges and Nevada lawmakers as well as senators and congressmen who took off weight at the spa and hobnobbed with show-business celebrities in the bar.

Republican Senator Jacob Javits of New York was a frequent visitor. Sources close to La Costa claim that Javits was considered a "special guest" who received services on the cuff. Contacted in Washington, the senator acknowledged through an aide that he had stayed at the resort, but insisted he had paid his own bills.

An aide to Arizona's Republican Senator Barry Goldwater told *Penthouse* that the senator has been a "close friend" of C. Arnholt Smith's for some time and that Goldwater has "nothing but sympathy for Smith." As for visits to La Costa on the part of the senator, the aide remarked, "it would surprise me if he hasn't."

And why not? The senator's brother, Robert, was a charter member of La Costa and is a frequent participant in Teamsters outings there—fun things such as the Frank Fitzsimmons Golf Tournament, named in honor of the Teamsters president. Also, the Goldwater family owns a large part of the Valley National Bank of Phoenix. *Penthouse* has documented the use of the Valley National

Bank by C. Arnholt Smith to obtain personal funds at a time when federal investigations were tightening a noose around Smith's empire. In July 1973, the SEC alleged that Smith, in violation of the law, was selling debentures issued from his U.S. National Bank after the SEC had filed its suit in May 1973. Some of these debentures were pledged to the Valley National Bank to support loans it had made to Smith.

BIG CRIME IS BIG BUSINESS

The triumvirate of government, business, and organized crime has been a fact of life for years. More recently, labor leaders have joined the club. In their parallel drives for profit and power, the gangsters became businesslike while many entrepreneurs and union leaders adopted gangster methods. Back-room poker players and candy-store bookies have become tycoons controlling billion-dollar cash flows. Former hit men are now experts at security frauds and aspiring Horatio Algiers cultivate the fine art of the fix.

The business of the mob has spread everywhere. Lucky Luciano fondly recalled in 1961 how his outfit had "muscle into the milk business. And we're still there." Jonathan Kwitny described in the *Wall Street Journal* how a mob-related "brokerage" business in New York levied a fifty-cent tariff on every 100 pounds of beef brought into the metropolitan area. Kwitny's story went on to detail how payoffs were made to union officials on behalf of the nation's largest beef packer.

The continuity of the La Costa gang's history brings the nature of organized crime into focus. In 1949, when Elliot Ness (of "Untouchables" fame) was Cleveland's Public Safety Director, he drove Dalitz and his friends from the shores of Lake Erie. The Cleveland Syndicate, while maintaining influence in the East through protégés, spent the next twenty years presiding over a hotel and gambling empire in Las Vegas.

The comfortable cover of Las Vegas was destroyed by Attorney General Robert Kennedy. By 1964, DRAM's casinos were infested with wiretaps and special surveillance teams looking for "skim" (unreported income from gambling). Then Allard Roen, Dalitz's favorite uncrowned prince, was forced to plead guilty to a felony rap in what turned out to be one of the largest stock frauds on record. Dalitz himself was ensnared in a tax-fraud case; he escaped by having his accountant take the rap.

The new heat, along with burgeoning opportunities in real estate, convinced DRAM to shift their base to California.

By the early Sixties, organized crime had a working relationship with San Diego's power elite. C. Arnholt Smith and his ex-shoeshine boy and protégé, John Alessio, exercised total control over San Diego and its neighboring Mexican city of Tijuana. Smith had reigned for a quarter of a century as chief money lord and political boss of San Diego city and county. Through Alessio's Agua Caliente racetrack and international

CONTINUED ON PAGE 110

bookmaking operation, the mob could "lay off" huge amounts of money.

Through Alessio, Smith's bank—the U.S. National Bank of San Diego—swelled with the receipts of Tijuana's Caliente track and international bookmaking. North of the border, Alessio became an important figure in the Democratic Party, while Smith rubbed elbows with the Republicans. Smith became, in the words of President Nixon's wife, Pat, "one of our earliest supporters." Until Watergate, he was also one of the biggest supporters.

Most observers of the La Costa phenomenon and organized crime agree that the DRAM group selected San Diego—and particularly its undeveloped northern area—because there was no established syndicate sphere of influence, and the local press was supportive of Smith rule.

The La Costa-Teamsters-Smith relationship was rarely advertised. San Diegans were unaware that their "Man of the Century" was part of an unholy alliance. But as early as 1967 a massive report prepared confidentially for the California Department of Corporations and the State Attorney General's Office began to tie together various groups active in northern San Diego large-scale real-estate transactions and financial manipulations. The report made note of the "efficient organization and communication between various factions making up the total of organized crime."

In addition to the La Costa group, the report also focused on the Baptist Foundation of America. This church organization had close ties to the La Costa-Teamster clique. It was a combine of ministers, fast-buck artists, and gangsters who purchased land around northern San Diego County with phony collateral, creating what was to become a \$26-million stock fraud.

The greening of La Costa's arid grazing land was costly; but unlike most investors and developers, the La Costa crew had extraordinary resources. Trustees of the Teamsters Central States Pension Fund sit on La Costa's board, and over \$50 million in Teamster funds have gone into the work.

Half a million Teamsters members are covered by the Central, Southeast, and

Southwest Areas Pension Fund. Unlike the Teamsters' Western Conference fund—which has its assets managed by the Prudential Life Insurance Company as a part of its general investment portfolio—the Central States Fund is handled directly by union officials and handpicked employer representatives. Over \$5 million pours into the Chicago head office weekly. With over \$1.5 billion in assets, it is the largest private cache of its kind.

The late Irvin J. Kahn, an attorney turned developer, was the largest recipient of Teamsters loans. Over \$185 million went to his purchase of some sixty square miles of San Diego real estate just south of La Costa. Kahn's unlimited line of credit with the Pension Fund was due to the good offices of St. Louis attorney Morris Shenker, who was Jimmy Hoffa's chief attorney. Shenker inherited most of Kahn's properties after his sudden death in September 1973.

Shenker, who has recently been under investigation by a federal strike force and grand jury in St. Louis, has emerged as a top financial arranger. His Byzantine financial maneuvering astounds investigators in and out of government. He first came to national attention twenty-five years ago during the Kefauver hearings. Twenty years later, his mob ties were detailed in a *Life* magazine exposé of former St. Louis Mayor A. J. Cervantes. (Shenker had got himself appointed to the St. Louis crime commission!) Since then, Shenker has shifted headquarters to his Dunes hotel and casino in Las Vegas. He visits San Diego often to oversee his country clubs, hotels, and land developments. He is a regular at high-level La Costa gatherings.

The Central Conference Fund has been involved in fraud and kickback scandals resulting in numerous indictments. All this hasn't bothered them one bit. As a private bank for its favorites, it has provided almost a billion dollars in preferred loans for luxury developments, vast real-estate tracts, slot-machine companies, and gambling casinos. Extensive investigation has uncovered scant evidence of any investments in cooperatives or low- or middle-income housing where rank-and-file Teamsters might reasonably expect to find shelter.

One of the many security-conscious conclaves at La Costa was a gathering on July 17, 1972, of Teamsters officials, organized-crime figures, and major Pension Fund re-

cipients, among others. One of the participants was the son of Jimmy Hoffa, the former head of the union, who had been convicted of jury tampering and fraud involving the Teamsters Union Pension Fund.

It was at these meetings that the officials formally endorsed Nixon's reelection. Subsequent investigations have revealed that Allen Dorfman—the Pension Fund's "special consultant"—had already collected \$1 million from Teamsters officials and organized-crime figures to donate to the Committee for the Re-election of the President in exchange for Hoffa's release and a "favorable" review of federal investigations into Teamsters officials and friends.

Dorfman lives in a luxury home next to La Costa's lush golf course; in between indictments for kickbacks and fraud involving Fund money, plus a nine-month stint in prison, Dorfman played a prominent role at Teamsters conclaves.

He inherited his interest in the pension fund from his late father, Paul "Red" Dorfman, who was one of the founders. Before his latest indictment for defrauding the fund (February 1974), Dorfman's control was complete. In the words of one insider, "He believes he's immune to everything. His power and authority were about as total as you can get."

Legal guidance for La Costa comes from John Andrew Donnelley, a leading San Diego attorney and power broker. In the late Forties, Donnelley had gone to Las Vegas with a client, Wilbur Clark, to help arrange construction of the Desert Inn.

In San Diego, Donnelley became an increasingly important functionary in the Smith machine. In Las Vegas he became chief counsel to the DRAM group. He is credited by some with saving Dalitz and his whole Las Vegas operation from ruin during the Guterra stock-fraud debacle. When Al-lard Roen, then the Desert Inn's executive director, was forced to plead guilty to fraud in that case, Donnelley took his place.

As a top-notch attorney, his services were invaluable during the intricate legal and financial maneuvering. Federal Tax Court proceedings in 1964 revealed that during the 1950's Donnelley was a key arranger of a series of transactions which the court concluded were "a sort of 'Tinker to Evers to Chance'"—in other words, something on the order of a preconcerted and well-coordinated triple play.

Donnelley covered all bases, representing or owning the Martinolich Shipbuilding Company, Refrigerated Transport Co., and National Steel and Shipbuilding and pushing a variety of purchases, loans, slot-machine deals, and construction projects.

The other owners involved included Wilbur Clark, Moe Dalitz, and Arnholt Smith. While the matrix of deals and loans involving hundreds of thousands of dollars never resulted in criminal charges, they spurred further federal probes into Dalitz's income tax returns.

More importantly, these early deals provide the first evidence of Donnelley's future

role in arranging the move to San Diego and as key power broker in the group's internal affairs.

When DRAM began buying up northern San Diego County real estate in 1962, Donnelley helped them set up a string of corporate fronts—Planet, Inc., Star Investment, and the Bagshaw Corporation—with which to take legal title to the initial 2,000 acres.

Donnelley helped coordinate the flow of Teamsters cash into San Diego real estate. His law office has handled over \$250 million in Teamsters land investments, and he has admitted in an interview that the various parties he represented were on "friendly" terms.

In 1970, the first crack in the Smith empire appeared—the indictment of John Alessio for over \$1 million in tax evasion. Alessio had been transporting large unreported sums of cash in steel drums to San Diego to pay for the renovation of his Hotel Del Coronado (the set for the film *Some Like It Hot*). His three-year jail term was eased by frequent vacations outside the federal prison at Lompoc, California.

Alessio's troubles pale before the onslaught that finally overtook Smith in 1973. While his political protector and longtime associate Richard Nixon was hamstrung by daily Watergate revelations, the SEC, the IRS, and the Federal Deposit Insurance Company closed in. In addition, the Justice Department's Organized Crime Section began to investigate Smith's ties to the mob.

All of these complicated interrelationships came together in the matter of La Costa's use of the U.S. National Bank for its business accounts and for the banking of its pension-fund loans.

On October 15, 1973, Lew Lipton, an officer of the bank and an emissary from Smith, was in Miami, meeting with Teamsters boss Frank Fitzsimmons and trying to get additional Teamsters deposits for Smith's projects. He was shaken when Fitzsimmons waved a copy of the *Miami Herald* announcing one of the largest bank failures in U.S. history. It was the USNB.

The Federal Deposit Insurance Corporation, which took control of the collapsed bank and which sued Smith and other officers for \$410 million in damages, has refused comment on questions relating to the amount of Teamsters money that was on deposit. (The bank's assets merged into the Crocker Bank, which guaranteed deposits on account.)

On July 2, 1974, after a ten-month investigation, a federal grand jury in San Diego returned a twenty-five-count indictment against Smith for secretly funneling \$170 million from his U.S. National Bank. The complex conspiracy alleged in the indictment—there were 165 overt acts—was part of a scheme dubbed the Monster Project by Smith and his closest aides.

To bring the monster down, it had taken all the diligence of the press, the atmosphere of Watergate, and the hard work of those whom Smith called "government bureaucrats out to get me."

"Many people suspect that the government's inadequate investigation of La Costa is a reflection of the group's political power."

But Smith's arrogance was not shattered. Even after the SEC action (May 31, 1973) forced him to report all large-scale transactions, documents indicate that he continued his wheeling and dealing. And, according to sources with firsthand knowledge, one of his close associates began making overtures to an important government witness against Smith right after his indictment.

THE LANSKY CONNECTION

One important name has been omitted from the La Costa story. Meyer Lansky, the dark eminence of organized crime and the financial brain of Lucky Luciano's original organization, has a long-standing relationship to La Costa. Some even trace La Costa's origins to a trip he made to Alessio's Tijuana racetrack fifteen years ago. Traveling by limousine down the old highway—El Camino Real—Lansky happened on the area. Already familiar with the high-profit marinas and waterways of Miami, he saw its possibilities. The legal and illegal profits of the mob's worldwide operations needed more outlets. Soon after, Lansky's allies were sizing up real estate and laying plans for future development. Five years later, La Costa Country Club opened its doors.

Whether he gave an order or a recommendation is unknown. When *Penthouse* attempted to reach him through his attorney, E. David Rosen, he was unimpressed with this desire to reconstruct history. "I advise you not to try and contact my client," said Rosen.

For forty-five years, Lansky has had a harmonious relationship with La Costa's Moe Dalitz. While Dalitz and his group paid close attention to Las Vegas and the West Coast, Lansky was busy in Florida, Cuba, and the Bahamas. Each in turn cut the other in on "skim," laundering techniques, and new investment opportunities. While Lansky ruled the Havana gambling scene during the reign of dictator Fulgencio Batista, his Cleveland friends were cut in on his Hotel Nacional de Cuba.

After Castro closed the gambling factories of Havana, Lansky's group moved to the Bahamas. By 1967, a Royal Commission of Inquiry was digging deep into the financial operations of the Grand Bahama Development Corporation. The deft hand of Lansky appeared in behind-the-scenes

planning for the island's new casinos.

Lansky, who generally stayed behind the scenes, worked through Wallace Groves, an experienced financial operator. When the heat increased in the Bahamas, Groves took advantage of La Costa's hospitality, commemorated in a 1968 directive from La Costa official Ben Vitale to the resort's employees:

Mr. and Mrs. Wallace Groves will be arriving here as a guest of La Costa and Mr. Herman Perl. . . . The principal partners at La Costa are delighted that Mr. Groves is visiting with us. We wish to extend every courtesy and compliment to Mr. Groves and his family to make their stay here a pleasurable and memorable one.

Perl, Vitale, and Groves have all been principals in the Grand Bahama Development Company, now known as Devco. Perl, a mastermind of Bahamas resort sales, had been brought to La Costa to increase profits for the DRAM group.

Lining up the ever-helpful Arnholt Smith's USNB as a prime lender, they moved into condominium development. La Costa became a new city built around the owner's plush real-estate area.

Within the last few years, Groves and Vitale have shifted their California base to Stallion Springs, a resort in the Tehachapi Mountains north of Bakersfield. Similar to La Costa in design, Stallion Springs is owned by Devco, which is now controlled by Groves and his wife.

On January 19, 1970, Lansky reportedly flew in to La Costa accompanied by some superstar swingers of the sports world. Between rounds of golf, Lansky attended meetings with Teamsters Pension Fund controllers and his old friend Moe Dalitz.

Weeks later, he went south to a new and even more exclusive mob retreat in Acapulco, Mexico. After huddling in Acapulco with a variety of old cronies and representatives of the Canadian mob, Lansky managed to elude intelligence agents of three countries. Six months later, the Illinois Bureau of Investigation, examining a small Acapulco hotel called The Towers, discovered that Meyer had used it as a hideaway to lose his pursuers. The Towers, a plush preserve, was owned at that time by La Costa members.

The leadership of La Costa has demon-

"These people are really powerful," said one California policeman. "They run their own show. Someone could get killed out there and you would never know it."

stated an uncanny ability to grow and survive. Their financial reserves tower over those of rival business groups. Their legal and financial advisers consistently stay one step ahead of law-enforcement investigators, and inquiring citizens are left in the dark as to the real story.

It wasn't until November 30, 1974, in an ABC network news report on Jimmy Hoffa, that La Costa received any unfavorable publicity before a large audience. Ironically, a Los Angeles affiliate of ABC—a network which has aired numerous sports specials from La Costa—mysteriously canceled an earlier investigative report on the resort and its owners.

When anything threatens La Costa, the heavy artillery—money—is rolled out. The technique is Meyer Lansky's legacy to his associates: he has had a lifetime of experience in the laying out of whatever it takes to remain undisturbed.

An example of how La Costa avoids unnecessary trouble is contained in a federal intelligence report on a meeting held there in July 1972. Teamsters executives and various cronies, advisers, and borrowers descended on La Costa to discuss, among other things, protection. A decision was made to annex La Costa to the tiny coastal town of Carlsbad-by-the-Sea. A new San Diego district attorney hostile to Smith rule had been elected after a series of massive bribery scandals in local government. According to the federal law-enforcement report, "It is believed that the real reason for having this annexation take place is that surveillance by the San Diego Sheriff's office will [now] be restricted." In November 1972, the citizens of Carlsbad voted 41 to 39 to annex La Costa, thereby removing the resort from county jurisdiction.

The financial and political clout of the La Costa group generates a certain powerless feeling and even a fear within the local community. Nearby residents and businessmen speak of "their endless supply of money." A local police officer commented to *Penthouse*, "I used to be assigned to La Costa. I sure was glad when I was transferred. These people are really powerful. They run their own show. Someone could get killed out there and you would never know."

Law enforcement on the state level hasn't been very effective, either. Consider what happened in the late 1960's when the California attorney general's office showed signs of following up criminal activity.

In 1967, the California Department of Corporations report was being prepared. State agents were active in closing down the Baptist Foundation of America security fraud. Well-known mob figures began to have trouble. Jimmy "the Weasel" Fratianno, an infamous hit man, found his movements closely watched. Alessio and his brothers were under constant surveillance. Smith's name began to crop up in more and more intelligence reports. One named his bank as a major supplier of loan money to mob-operated bars and restaurants.

With the election of 1970, all this came to

an end. Evelle J. Younger became the new attorney general. After a tumultuous term as district attorney of Los Angeles, Younger had gained a reputation as a "law and order" man. A consummate opportunist in the Nixon tradition, he soon made it perfectly clear who he thought were the enemies of the people.

Under Younger's leadership, the "yellow peril" took the heat off organized crime in California. His office issued reports and he himself made a straight-faced proclamation that so-called "Chinese youth gangs" represented the newest and greatest threat. The supporting cast in Younger's scenario included Hell's Angels and a wide variety of "militants."

In an interview with *Penthouse* and Katy Butler, a reporter for the San Francisco Bay Guardian, Younger could not remember the Baptist Foundation case (a \$26-million fraud) or any State investigations of John Alessio and C. Arnholt Smith. This memory lapse becomes understandable after examining the sources of contributions made in support of Younger's campaign during the 1970 election.

First, there was over \$45,000 from Conrad Arnholt Smith. Most of it was officially designated as loans from Smith, his daughter, and Smith's political adviser, Frank Thornton. The loans were never repaid, a fact which should have been of some concern to an attorney general. Smith was Younger's largest contributor, because unrepaid loans of this type are actually contributions and have to be reported as such. Said the attorney general: "Mr. Smith and Mr. Thornton apparently borrowed from themselves and spent it with Barnes-Champ [Smith's advertising agency], and I know very little more than that about it."

The repeated failures of state and local law-enforcement agencies suggest that the only apparatus capable of taking on such a complex, sophisticated, multijurisdictional phenomenon is the federal government. But knowledgeable law-enforcement officials are frustrated over the fact that investigations have been miserably inadequate, despite the existence of eighteen strike forces around the country, staffed with specialists from various government agencies (IRS, FBI, SEC, Post Office, etc.) and directed by capable Justice Department attorneys.

Many suspect that the government's lack of commitment is a reflection of the La Costa group's political power. A high official within a Justice Department organized-crime strike force remarked to *Penthouse*, "They're too smart for us. We'll never put them away."

Because of the complicated financial matters involved, the agency best equipped to deal with the problem is the Intelligence Division of the IRS. As for the Federal Bureau of Investigation—which has four times as many special agents as IRS Intelligence, as well as more criminal jurisdiction and investigative latitude—it has failed historically to combat organized crime.

Rumors that La Costa was to be sold to Japanese interests for \$200 million have circulated regularly in the last few years.

Penthouse has been able to document the fact that discussions have taken place between representatives of La Costa and certain Japanese investors, but except for the purchase of a small parcel of land in the industrial park, nothing firm has emerged from those discussions.

La Costa sales representatives are quick to deny these rumors. Said one official, "This whole package is too complex to sell, and besides we're the only ones who know how to run the place. Even if we sold out to the Japanese, we'd have to stay around for a couple of years to manage the operation."

Whether La Costa is sold or not is a mere detail. It is only a place. If the mob and its friends in business and government fly from La Costa, they will find some new nest.

CRIME AND CORRUPTION

La Costa's image as a posh resort camouflages its strategic importance to big crime. Camouflage is essential to crime, as labor organizations are transformed into company unions and private fiefdoms through racketeering; politicians swallow the intoxications of wealth, never questioning its sources; and a paper-hungry economy is unable to stop the flood of fraudulent transactions.

The record of C. Arnholt Smith is a classic example. Smith's political "influence"—corrupting politicians and bureaucrats—allowed him to amass a fortune while avoiding regulation of any kind. His final Monster Project nearly destroyed the tuna industry on the West Coast, taxi fleets in thirteen cities, and the livelihoods of thousands of farm and office workers. In addition, two major banks which incurred losses as creditors of Smith's fallen bank—Franklin National and Germany's Bank Herstatt—suffered economic ruin themselves.

The wave of financial corruption and securities fraud is so widespread that major banks are afraid to examine the paper (securities, etc.) they hold as collateral. The reason, according to a Senate probe, was the fear that unknown billions in "assets" would prove to be stolen or counterfeit.

The irresistible nature of crime and corruption permeates society. Over a dozen top corporations and their executives have pleaded guilty to illegal campaign contributions related to Watergate. Nine of the nation's major oil companies were involved in jointly bribing public officials. The country's largest railroad, Penn Central, went bankrupt as a result of a series of fraudulent transactions and investments.

Alliances between crime and wealth are an American tradition. With so much crime at the top, it is hardly surprising that many people see corruption as our dominant characteristic. The La Costa playground is a power center for the organization and proliferation of that corruption. ☐

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